IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 100 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX
Versus
SARABHAI CHEMICALS PVT. LTD.

Appearance:
MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

At the instance of the Commissioner of Income Tax, the Income Tax Appellate Tribunal, Ahmedabad Bench, "C" has referred the following question of law for the opinion of this Court :

"Whether, the Appellate Tribunal is right in law in allowing reduction of Rs.2,69,194/- on account of property income ?"

2 The assessment year is 1979-80 and the relevant accounting period is commencing from 1/7/1977 and ending on 30/6/1978. The assessee entered into an agreement for sale on 28/2/1977 whereby the industrial undertaking and the business of the assessee were transferred to one Elscop Pvt.Ltd.; pursuant to the aforesaid agreement for sale a deed of assignment was executed on 28/6/1977. Immovable properties which were part and parcel of the industrial undertaking were transferred under duly executed registered document on 2/2/1978. In view of these facts the Income Tax Officer was of the view that as the assessee was the legal owner of the property in question, till conveyance was duly registered, proportionate property income i.e. from 1.7.1977 to 2.7.1978 should be assessed in the hands of the assessee. He accordingly brought to tax a sum of Rs.6,69,194/being the proportionate ALV for seven months.

3 The CIT (Appeals) came to the conclusion that the assessee company was left with merely a technical or formal ownership of the immovable property and as the immovable property formed part of the industrial undertaking whose control and management vested with the vendee there was no question of assessing the proportionate income from property in hands of the assessee. The Tribunal confirmed the view taken by C.I.T.(Appeals) in the appeal of the revenue and hence this reference.

4 We have heard Mr.Akil Qureshi, learned Standing Counsel for the revenue and Mr.R.K.Patel, learned Counsel representing the assessee-respondent. In our opinion, the question is concluded by the decision of the Apex Court in the case of C.I.T. vs. Podar Cement Pvt.Ltd. & Ors., 226 I.T.R.625 as well as Full Bench decision of our Court in C.I.T. vs. Mormasji Mancharji Vaid, 250 I.T.R.542. In the case of Podar Cement Pvt.Ltd.(Supra) the Apex Court has held that the property cannot be owned by two persons, each one having independent and exclusive right over it. Hence, for the purpose of Section 9 of the 1922 Act, the owner must be "that person who can

exercise the rights of the owner, not on behalf of the owner but in his own right". Therefore, in light of the aforesaid ratio the liability to pay tax on income from property is clearly on the person who receives or is entitled to receive the income from property in his own right.

5 In light of the facts stated hereinbefore and applying the ratio of the aforesaid decisions to the facts of the case, we do not find any infirmity in the order of the Tribunal. The Tribunal was right in allowing the reduction of Rs.2,69,194/- on account of property income. The question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

6 The reference is disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt